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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,018	12/31/2003	Michael K. Eschmann	ITL1083US (P18347)	3661
21906	7590	11/27/2006	EXAMINER	
TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631			SCHLIE, PAUL W	
			ART UNIT	PAPER NUMBER
			2186	

DATE MAILED: 11/27/2006

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/751,018  
Filing Date: December 31, 2003  
Appellant(s): ESCHMANN, MICHAEL K.

Timothy N. Trop, Reg. No. 28,994  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 9/6/06 appealing from the Office action  
mailed 5/12/06.

**(1) Real Party in Interest**

The real party of interest is Intel Corporation.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

U.S. App. Pub. 2003/0145165, Herbst et al., hereinafter "Herbst"

Applicant Admitted Prior Art and Definitions.

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 102/103***

Claims 1-25 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Herbst et al. (US App. Pub. 2003/0145165).

As per independent claims 1, 10 and 18, Herbst et al. teaches a cached disk sub-system and/or method comprising the means to prioritize the execution of demand (i.e. read/write) requests over the execution of non-demand (i.e. flush/write-back) requests and/or operations (see figure 3); where although Herbst et al. does not explicitly identify read or write requests as being demand requests, it is considered obvious to one of ordinary skill in the art that such requests are defined as such within the context of the applicants disclosure, thereby considered equivalent for the purpose of examination.

As per claims 2-9, 11-17 and 19-25, being dependent on claims 1, 10, 18, or correspondingly dependant claim inclusively, Herbst et al. further teaches that non-demand write-back's begun during an otherwise idle period may be preempted after receiving a demand request (figure 3 elements 318 and 324) such that the uncompleted portion of said non-demand write-back may be re-queued (figures 4 and 5, and paragraph 16). Where although Herbst et al. does not explicitly teach requests may be queued, that non-demand write-back operations may include flush operation requests, or that such requests may be generated by a driver; it is considered inherent that requests may be queued as it is taught that a previously initiated but non-complete

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write-back operation may be preempted by an otherwise pending (i.e. queued) demand operation request, and obvious to one of ordinary skill in the art at the time of the claimed invention that non-demand requests may include flush requests issued from an operating system interface (i.e. driver) as acknowledged by Eschmann et al. as prior art within the "Background" section of the application. Any potentially remaining limitations not otherwise considered explicitly addressed are correspondingly considered obviously inherent in that taught, clearly obvious to one of ordinary skill in the art at the time of the claimed invention, and/or not sufficient to patentably distinguish over prior art.

**(10) Response to Argument**

Applicant's arguments filed 9/6/06 have been fully considered but are not persuasive with respect to the rejection of claims 1-25 under 35 U.S.C. §102/103; as Herbst teaches that cached read/write requests, as defined by the applicant as being "demand requests" within the context of the disclosure (see page 5 second sentence, "... a demand request (that is, a request to write data to or read data from the cached disk subsystem) ..."), are prioritized over write-back/flushing to disk as correspondingly taught by the applicant as being non-demand requests (see page 6 second sentence, "Basically, the write back requests may be assigned a lower priority than demand data requests ..."); the reference is considered to clearly read on that claimed by the applicant although not explicitly categorizing such requests as being either demand or non-demand requests, as their respective specified behaviors are logically equivalent.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Paul W. Schlie

Conferees:

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